IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 978 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANILKUMAR RAMNATH KUSHVAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 978 of 2000

MS SADHANA SAGAR for Petitioner No. 1-2

THROUGH JAIL for Petitioner No. 1-2

MS PB SHETH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/10/2003

ORAL JUDGEMENT

In this appeal, appellant no.1, Anilkumar Ramnath Kushvah is absconding and therefore, the appeal with respect to this appellant will stand pending. The appeal is required to be taken up with respect to appellant no.2, Siyaram Rameshvarprasad Kushvah. He was accused no.5 before the Sessions Court, Valsad at Navsari in Sessions Case No.146/1997. He was convicted by the learned Sessions Judge by judgment and conviction order dated 06/10/2000 for an offence punishable u/s.397 IPC and was sentenced to suffer R.I. for seven years. He was directed to pay fine of Rs.10,000/- and in default of payment of fine, he was required to undergo further S.I. for one year.

2. Feeling aggrieved by the said judgment and conviction order of the trial court, the said appellant along with appellant no.1 has preferred this appeal before this Court.

3. On going through the judgment of the trial court, it appears that there were in all five accused persons and the present appellant was shown as accused no.5 in the said matter. It appears that the said appellant was also convicted for an offence punishable u/s.398 IPC and was sentenced to suffer R.I. for seven years and was directed to pay fine of Rs.10,000/-. In default of payment of fine, he was required to undergo further S.I. for one year. The appeal has been filed against the said conviction by the appellant. The learned APP produces on record the jail record in respect of this appellant. It is taken on record.

4. During the course of hearing, the learned advocate for the petitioner does not press this appeal so far the conviction is concerned. It is more so when this appellant is said to be in jail sentence since 1997. Therefore, he has already undergone jail sentence for about six years and according to the argument of the learned advocate for the appellants, the said appellant will be out of jail very soon because of the remission which the appellant is likely to get, in accordance with rules. Therefore, the conviction for offences punishable u/s.397 and 398 IPC has not been challenged. Even, with respect to the substantive sentence imposed by the trial court as aforesaid for offences punishable u/s.397 and 398 IPC has also not been challenged by the learned advocate for the appellants.

5. The only contention raised by the learned advocate for the appellants is that the fine imposed by the trial court i.e. Rs.10,000/- for each of the

aforesaid two offences is very harsh. The co-accused were also convicted and sentenced similarly and this Court had taken a lenient view in Criminal Appeal No.1024/2000, whereby the fine of Rs.10,000/- was reduced to Rs.5,000/-.

6. The learned advocate for the appellants states that the present appellants and the appellants in the aforesaid appeal i.e. Criminal Appeal No.1024/2000 were together as per the case of the prosecution and therefore, even as per the case of the prosecution, they are similarly situated. Hence, it would be appropriate to place them on par, so far the imposition of fine is concerned.

7. Considering the facts and circumstances of the case and looking to the order of this Court dated 02/08/03 recorded in Criminal Appeal No.1024/2000 and considering the fact that the accused in the said case and the accused in the present appeal are similarly situated, it would be appropriate to follow the decision in the aforesaid appeal.

8. For the foregoing reasons, the appeal with respect to appellant, Siyaram Rameshvarprasad Kushwaha, is partly allowed. The judgment and conviction order recorded by the trial court, convicting the appellant for offences punishable u/s.397 and 398 IPC are ordered to be confirmed and to that extent, the appeal stands dismissed.

8.1 So far the substantive jail sentence is concerned, there also the judgment and sentence order of the trial court are confirmed and the appeal of this appellant to that extent stands dismissed.

8.2 However, so far the judgment and order of the trial court imposing fine of Rupees Ten Thousand on the appellant for each of the two offences punishable u/s.397 and 398 IPC are concerned, the said judgment and order to that extent are set aside and the appeal of this appellant is partly allowed to the extent that the appellant shall pay fine of Rupees Five Thousand for each of the said two offences punishable u/s.397 and 398 IPC and in default of payment of fine, he shall undergo S.I. for six months instead of one year for each of the said two offences. The appeal is partly allowed accordingly with respect to this appellant only.

8.3 The appeal of the first appellant, Anilkumar Ramnath Kushvah will be taken up for hearing as soon as the said appellant is apprehended and available.

(D. P. Buch, J.)

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